

Craig Williams Attorney at Law, P.L.L.C.
State Bar #014929
P.O. Box 26692
PRESCOTT VALLEY, AZ 86312
TEL.: (928) 759-5572
FAX: (928) 759-5573
Email: craigwilliamslaw@gmail.com
Attorney for Defendant

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K GRESHAM

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	P1300CR201001325
)	
Plaintiff,)	
)	
vs.)	RESPONSE re: STATE'S MOTION FOR
)	CLARIFICATION
STEVEN DEMOCKER,)	
)	
Defendant.)	
)	(Hon. Gary Donahoe)
_____)	

The Defendant, by and through undersigned counsel, hereby Responds to the state's "Motion for Clarification" ("Motion") filed on February 13, 2012. The Defendant does not waive any of his Rights concerning Due Process of Law per the 5th and 6th Amendments of the U.S. Constitution, § 2, Articles 3, 4 and 24 of the Arizona Constitution, and Rule 16.1(d), Arizona Rules of Criminal Procedure. The state's Motion is merely an attempt for another "bite at the apple," and to circumvent prior and still valid Court Rulings. The state's Motion should be denied in its entirety.

In its Motion, the state said:

"Looking back, *the state was vague* on what jail calls it was asking the Court to allow at trial and the reasons behind the request."

(Motion, pg. 1, italics added).

This "*state was vague*" statement is a bit incredulous, considering that the state had previously filed a Motion for Reconsideration, on January 18, 2012, which contained a section entitled "Recorded jail calls." Subsequently, the state was given a chance to argue its Motion for Reconsideration on February 8, 2012, which this Court's February 10, 2012 MEO noted:

"Also pending before the Court are the State's "Motion for Reconsideration" ... The Court has considered the pleadings and the information' provided by counsel on February 8, 2012."

(February 10, 2012 MEO).

As the Defense noted in its Response to the state's Motion for Reconsideration:

On April 13, 2010, the Trial Court precluded calls not only based upon late disclosure but also because, as the court stated, "I still see some other issues with regard to relevance, cumulative, and those sorts of things." (State Exhibit 6, April 13, 2010, transcript p. 46, l. 21-22.) No good cause has been shown as to why this ruling should be changed.

(Response, pgs. 2-3).

At some point, the Defendant is entitled to an end to arguing the same points over and over.

Collateral estoppel prevents re-litigation of an issue that was "actually litigated in a previous proceeding" if the parties had "a full and fair opportunity and motive to litigate the issue," "a valid and final decision on the merits" was entered, "resolution of the issue [was] essential to the decision," and the proceedings share a "common identity of the parties." Garcia v. Gen. Motors Corp., 195 Ariz. 510, 514, ¶ 9, 990 P.2d 1069, 1073 (App.1999)

(Clusiau v. Clusiau Enterprises, Inc., 225 Ariz. 247, 249, 236 P.3d 1194, 1196 (Ariz.App. Div. 1,2010)).

Collateral estoppel should prevent the endless re-litigation of issues. If the state does not agree with the Court's ruling, *they should file a special action.*

However, should the Court be inclined to seriously consider the state's Motion, the Defendant requests an evidentiary hearing, where the state would have the burden of proof. One

of the issues which should be explored at an evidentiary hearing is the accuracy of the state's paraphrased texts concerning the jail phone calls. If the Court examines the attachments to the state's Motion, what jumps out immediately is the state's liberal use of ellipses.

In formal writing, the most common way to use an ellipsis is to show that you've omitted words. For example, if you're quoting someone and you want to shorten the quote, you use ellipses to indicate where you've dropped words or sentences.

(Source: <http://grammar.quickanddirtytips.com/ellipsis.aspx>, by Mignon Fogarty).

Don't Use Ellipses to Change the Meaning of a Quotation.

It's wrong to use an ellipsis to make even a subtle change to the meaning of a quotation. Integrity is essential when using ellipses this way. It's acceptable to tighten a long quotation by omitting unnecessary words, *but it's important that you don't change the meaning.*

(*Id.*, italics added).

The Defense has contracted with Christi Weedon, of AZ Paralegal Services, LLC, Prescott, AZ., to review the jail calls. Ms. Weedon has done a quick review of the calls referred to in the state's Motion, and has found two important examples of the misuse of the state's paraphrasing. First, on pg. 7 of the state's Motion, #23, the state included this paraphrase:

"Feb 5, 2009 @ 16:16 w/Charlotte, Knapp was always very strange ... He was really nice guy."

However, what was actually said is materially different:

February 5, 2009 @ 16:16 (#137558978128898 @11:26)¹

SD: We will probably never really know if it was related in any way, or if it was just Jim Knapp being Jim Knapp.

CD: Yeah he was always very strange once he got skin cancer.

SD: Yeah

CD: He was a really nice guy when I was little. I remember him from Mountain Oaks.

¹This quotation was prepared by Ms. Weedon, and she is available to testify at an evidentiary hearing. "CD" = Charlotte DeMocker.

SD: Well I think he was always a little needy.
CD: Well he was always was a little needy, but he was a little bit more normal than he was.
SD: Oh sure. Yep.
CD: He went a little bit off the deep end I think.

Another example of a misstatement found by Ms Weedon is the following paraphrase on Bates-stamped page 017806, attached to the state's Motion:

"12/9 to JD -- still talking how carol owed him 8300"

Ms. Weedon said that there were 6 calls on 12/9, but none mentioned Carol owing the Defendant \$8300.00.

It is important to note that Ms. Weedon found these two examples with just a quick review. A more thorough analysis is ongoing.

The liberally edited jail-call quotations included in the state's Motion require an analysis under the Rule of Completeness, Rule 106, Arizona Rules of Evidence.

The rule of completeness is set forth in Fed. R. Evid. 106 as follows:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

The Advisory Committee Notes state, in relevant part:

The rule is based on two considerations. *The first is the misleading impression created by taking matters out of context.* The second is the inadequacy of repair work when delayed to a point later in the trial. . . . For practical reasons, the rule is limited to writings and recorded statements and does not apply to conversations. Fed. R. Evid. 106 advisory committee's note.

We stated in Collicott that, "the rule of completeness requires that a full document or set of documents be introduced: 'When one party has made use of a portion of a document, such that misunderstanding or distortion can be averted only through presentation of another portion, the material required for completeness is ipso

facto relevant and therefore admissible" 92 F.3d at 983 (quoting Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 172 (1988)).

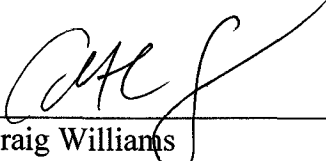
U. S. v. Bourgeois, 110 F.3d 70 (9th Cir. Cal. Mar. 20, 1997, italics added).

In addition, some of the calls paraphrased in the Bates-numbered exhibits (017805-017813, see: the 12/9 example, *supra*) attached to the state's Motion are referenced only by dates -- not by the specific time of the jail call on that date. This creates a needle-in-the-hay-stack problem for the Defense. For instance, there could be several phone calls on one date which would have to be reviewed to find language the state paraphrased into a short segment.

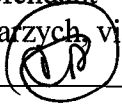
Conclusion:

It is the Defense position that no subsequent judge should change what Judge Lindberg so carefully ruled on. This is now the state's third bite at the apple. However, should the Court be inclined to seriously consider the state's Motion, the Defendant requests an evidentiary hearing -- where the state would have the burden of proof -- and one of the issues which would be explored is the accuracy of the state's paraphrased texts concerning the jail phone calls. The Defendant request that should the Court entertain changing any previous ruling, that the Court make specific findings as to why.

RESPECTFULLY SUBMITTED this February 22, 2011.



Craig Williams
Attorney at Law

A copy of the foregoing delivered to:
Hon. Gary Donahoe, Division One
Jeff Paupore, Steve Young, Yavapai County Attorney's Office
The Defendant
Greg Parzych, via e-mailed .pdf
by:  _____